

Update: Crime Victim Rights Manual

CHAPTER 10

Restitution

10.9 Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

C. Triple Restitution for Serious Bodily Impairment or Death of a Victim

Replace the July 2003 update to page 245 and the two paragraphs immediately following the quoted list near the top of page 245 with the following case summary:

According to the Michigan Court of Appeals in *People v Thomas*, ___ Mich App ___, ___ (2004), the phrase “serious impairment of a body function” as it is defined in the no-fault act, MCL 500.3135(1), is not relevant to a court’s analysis of an injury resulting from a defendant’s violation of MCL 750.81d(3)—resisting arrest and causing the police officer serious bodily impairment. The no-fault act’s definition of the phrase and case law based on that interpretation are not applicable to circumstances like those in *Thomas* because MCL 750.81d(7)(c) expressly provides that “serious impairment of a body function” is to be defined as the phrase is defined in MCL 257.58c. *Thomas, supra*, ___ Mich App at ___.

The definition of “serious impairment of a body function” in MCL 257.58c is substantially similar to the definitions of this term in the provisions of the CVRA authorizing triple restitution for victims who sustain a serious bodily impairment as a result of an offender’s criminal conduct. See MCL 780.766(5), 780.794(5), and 780.826(5). In *Thomas*, the Court of Appeals rejected both parties’ assertion that the no-fault statute should be considered “in pari materia” with the definition in MCL 257.58c. The *Thomas* Court explained that the doctrine of “in pari materia” was inapplicable because

“[t]he two statutes [MCL 257.58c and 500.3135(1)] do not relate to the same subject or share a common purpose. The no-fault act provides a system of civil compensation and liability for automobile accidents; the statute at issue [in *Thomas*] prohibits and criminalizes assaultive behavior while resisting an arrest.”
Thomas, supra, ___ Mich App at ___.

The Court also noted that a court may not look outside the statute at issue when, as in *Thomas*, the definitions of terms relevant to the dispute are provided in the statute itself. Thus, in *Thomas*, it was improper to consider the no-fault act’s definition of “serious impairment of a body function” because MCL 750.81d(7) provided the definition of the phrase by direct reference to MCL 257.58c. Similarly, the statutory provisions governing triple restitution in cases involving serious bodily impairment under the CVRA contain a definition of the phrase so that reference to the no-fault act’s definition is improper.

Because the definition of “serious bodily impairment” used in MCL 750.81d(7)—the phrase as defined in MCL 257.58c—is substantially similar to the definitions used throughout the CVRA, the *Thomas* Court’s disposition of the issue is relevant to cases under the CVRA involving the interpretation of “serious bodily impairment.” The CVRA’s definitions of the phrase are prefaced with “serious impairment of a body function includes, but is not limited to” the specific list of injuries included in the definitions. According to the *Thomas* Court:

“[T]o determine whether injuries to the officer here constitute serious impairments of a body function under the statute, we consider their similarity to injuries within the statutory list.”
Thomas, supra, ___ Mich App at ___.

The same analysis applies to a determination of serious bodily impairment under the triple restitution provisions of the CVRA.